



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-25
Regulation title	Auxiliary Grants Program
Action title	Amend Auxiliary Grant (AG) Regulations
Date this document prepared	August 20, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed action is to (1) clarify and simplify requirements for assisted living facilities (ALF) to document proper handling of Auxiliary Grant (AG) funds and AG recipients' personal needs allowances; (2) establish a residency requirement for AG applicants; and (3) ensure that the regulations conform to current Virginia Department of Social Services' (DSS) licensing and assessment regulations.

The goal of the amendments is to provide assurances that residents' AG funds are properly handled; to ensure that appropriated funds are designated for Virginia residents; and to maintain consistency among DSS regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The legal basis for this regulation is §§ 63.2-217 and 63.2-800 of the Code of Virginia. These sections provide general authority for the development of regulations for program operation and mandatory authority for the development of regulations for the AG Program.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

ALF providers in the Commonwealth have expressed concerns that the audit requirements found in the current regulation were costly, complicated, and burdensome and that some providers would likely withdraw from the AG program, thus reducing the number of available AG beds. Replacing the annual financial audit requirement with an annual certification will provide sufficient information to assure that AG residents receive their personal needs allowances and that their funds are not commingled with facility funds.

Creating a residency requirement will ensure that AG beds are available to low-income Virginia residents in need of ALF placements and reduce the number of out-of-state residents who relocate to Virginia in order to take advantage of the AG Program. This would contribute to the health, safety and welfare of Virginia citizens.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Proposed changes to the regulation include removing the requirement that ALFs accepting AG recipients submit an “annual audit report” to DSS and replacing it with a requirement for an annual AG certification; the addition of a Virginia residency requirement for AG eligibility; clarification of the process for submitting the provider agreement; amendments to the assessment process for emergency ALF placements; and clarification of procedures regarding resident discharges from facilities.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The amended regulation is an effort to establish a less burdensome though equally effective method of ensuring accurate and proper handling of AG funds and recipients’ personal needs allowances. ALF providers have requested that the regulation be reviewed and proposed changing the current requirement of an annual audit report to an annual certification of compliance.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

DSS is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, and 3) potential impacts of the regulation. DSS is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Paige McCleary, Adult Services Program Consultant, 7 N. 8th Street, Richmond, VA 23219; paige.mccleary@dss.virginia.gov; or 804 726-7895 (fax). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DSS plans to use a participatory approach in the development of the proposal. Input will be sought from stakeholders, including ALF providers, local departments of social services, and groups advocating on behalf of the disabled and elderly individuals. ALF providers and VDSS Licensing staff participated in developing the proposed annual certification amendments.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed amendments will have a positive impact on family stability, responsibility and safety by strengthening protections for the financial well-being of AG recipients in ALFs. Simplifying and reducing the cost of complying with AG regulations will make it more attractive for ALF providers to participate in the AG Program. Strengthening Virginia residency requirements for AG recipients will ensure the AG Program continues to benefit elderly and disabled Virginia citizens in need of ALF placement. Clarifying requirements regarding the submission of the ALF provider agreement will ensure that providers are fully informed and in compliance with AG regulations and maintain the rights of ALF residents. These amendments will not impact parental authority or rights, or marital commitment.